

APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of Andrew Ansbro, as President of the Uniformed Firefighters Association (UFA),

Petitioner,

Index No. 159738/2021

For a Judgement Pursuant to Article 78 of the Civil Practice Law and Rules, vacating the mandatory vaccination order issued by Respondents for all City employees to the extent that it is applied to firefighters, fire marshals, marine pilots and marine engineers employed by the Fire Department of the City of New York

**AFFIRMATION OF
MICHELLE E. MORSE,
MD., MPH**

- against -

Bill de Blasio, as Mayor of the City of New York; The New York City Department of Health and Mental Hygiene; and the Fire Department of the City of New York,

Respondents.

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I, Michelle E. Morse, hereby affirm, pursuant to Rule 2106 of the New York Civil Practice Law and Rules (“CPLR”) as follows:

1. I am the Chief Medical Officer of the Department of Health and Mental Hygiene (“DOHMH” or “the Health Department”) of the City of New York.
2. I received my BA from the University of Virginia in 2003, my MD from the University of Pennsylvania in 2008, and an MPH from Harvard School of Public Health in 2012.
3. Prior to working at the Department of Health and Mental Hygiene, I served as a Health Policy Fellow at the National Academy of Medicine; Assistant Professor at Harvard

Medical School; Assistant Program Director of the Internal Medicine Residency Program at Brigham and Women's Hospital; and Deputy Chief Medical Officer at Partners In Health.

4. The information provided in this affirmation is based on my personal knowledge and professional expertise.

5. Coronavirus disease, or the 2019 Novel Coronavirus (COVID-19), is an infectious disease caused by the SARS-CoV-2 virus.

6. COVID-19 most commonly spreads between people who are in close proximity, i.e., within approximately 6 feet with one another. It is spread primarily when someone infected with the virus releases droplets or particles when talking, coughing, sneezing, or singing, and the droplets or particles are breathed in by another individual or land in another individual's eyes, nose, or mouth.

7. COVID-19 has affected the lives of hundreds of millions of people worldwide and remains a serious threat all over the world and, in particular as it relates to the instant litigation, to New York City residents. As of the date of this affirmation, there have been at least 253 million reported cases of COVID-19 worldwide (Johns Hopkins, <https://www.arcgis.com/apps/dashboards/bda7594740fd40299423467b48e9ecf6>, accessed 11/15/21), including over 46 million in the United States (CDC, https://covid.cdc.gov/covid-data-tracker/#trends_dailycases, accessed 11/4/21), of which over 928,000 have been in New York City (DOHMH, <https://www1.nyc.gov/site/doh/covid/covid-19-data-totals.page>, accessed 11/15/21). There have been over 5 million reported deaths from COVID-19 worldwide (Johns Hopkins, <https://www.arcgis.com/apps/dashboards/bda7594740fd40299423467b48e9ecf6>, accessed 11/15/21); 759,552 reported deaths in the United States (CDC, https://covid.cdc.gov/covid-data-tracker/#trends_dailycases, accessed 11/15/21); and 34,688 confirmed and probable deaths in New

York City alone (DOHMH, <https://www1.nyc.gov/site/doh/covid/covid-19-data-totals.page>, accessed 11/15/21).

8. On January 31, 2020, the United States Department of Health and Human Services declared the COVID-19 virus a public safety emergency, and on March 11, 2020, the World Health Organization declared it to be a global pandemic.

9. In the late winter/spring of 2020, New York City was the epicenter of the COVID-19 pandemic in the U.S. It suffered from a shortage of medical equipment, personal protective equipment, intensive care unit beds, and medical personnel.

10. Accordingly, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98, which remains in effect today, declaring a state of emergency in New York City.

11. On March 25, 2020, the then-Commissioner of the Health Department declared COVID-19 a public health emergency within the City. That declaration remains in effect today.

12. As of the date of this affirmation, New York City still is battling COVID-19. In particular, “variants of concern,” including the Delta variant, which currently predominates in New York City, accounting for the vast majority of COVID-19 infections.

13. Some variants of COVID-19 are particularly concerning because they are more easily and quickly transmitted. In particular, the Delta variant is highly contagious – more than twice as contagious as previous variants, according to the CDC – and may cause more severe illness, particularly in unvaccinated individuals. This is the case because individuals infected with the Delta variant tend to have much higher “viral loads,” meaning that they have a higher amount of the virus in their systems. A higher viral load makes an individual more contagious and allows spread of the virus in a shorter time period after exposure.

14. It is because of the ease in speed of the spread of the Delta variant, in particular, that testing, even if frequent, cannot be relied upon to keep New York City employees and the public they serve safe. Because the Delta variant can spread so quickly, and because the timing between exposure and becoming infectious varies, it is possible for an individual to be exposed, test negative the next day, and begin spreading the virus during the following days. Thus, testing even once a week is not sufficient to prevent the spread of the virus. This is exacerbated by the fact that someone who is infected with COVID-19 may be asymptomatic and still capable of spreading the virus to others.

15. In late 2020 and early 2021, three vaccines were given emergency authorization in the United States. Specifically, on December 11, 2020, the Food and Drug Administration (FDA) issued an Emergency Use Authorization (EUA) for the Pfizer-BioNTech COVID-19 vaccine; on December 18, 2020, the FDA issued an EUA for the Moderna COVID-19 vaccine; and on February 27, 2021, the FDA issued an EAU for the Johnson & Johnson/Janssen COVID-19 vaccine. Then, on August 23, 2021, the FDA gave full approval to the Pfizer vaccine for people ages 16 and older.

16. These vaccines have proven highly effective in preventing the spread of COVID-19. In clinical trials, the Pfizer vaccine had a vaccine efficacy of 95% for symptomatic infection (ages 16 and older); the Moderna vaccine had a vaccine efficacy of 94.1% for symptomatic infection, and the Johnson & Johnson vaccine had a vaccine efficacy of 85% for prevention of severe disease. Numerous studies have since shown that the vaccines have been very effective at preventing severe COVID-19 outcomes. For example, a study of 89,000 hospitalized patients with confirmed COVID-19 showed that the Pfizer and Moderna vaccines were 90% effective at preventing hospitalization in immunocompetent patients

(https://www.cdc.gov/mmwr/volumes/70/wr/mm7044e3.htm?s_cid=mm7043e3_w). The

COVID-19 vaccines benefit both the vaccine recipients and those with whom they come into contact, including children too young to be vaccinated and people who are immunocompromised. More people vaccinated also means fewer infections and less opportunity for the virus to mutate into new more dangerous variants.

17. At this point in time, most cases and nearly all severe cases in New York City are among people who are not vaccinated against COVID-19. The Health Department reports that between January 17 and August 7, 2021, people who were unvaccinated or not fully vaccinated accounted for 96.1% of COVID-19 cases, 96.9% of COVID-19 hospitalizations, and 97.3% of COVID-19 deaths in New York City. Additionally, between January 17 and October 27, 2021, there have been a total of 42,587 hospitalizations among people who are not vaccinated and only 2,342 among people who are fully vaccinated in New York City. During the same time period, there was a total of 7,465 reported deaths among people who are not vaccinated and 319 among people who are fully vaccinated (DOHMH, <https://www1.nyc.gov/site/doh/covid/covid-19-data.page#daily>, as of 10/27/21).

18. Wearing a mask and getting tested frequently for COVID-19 are helpful in reducing the spread of COVID-19, but much less so than the vaccines.

19. Further, the level and duration of immune protection that results from a prior COVID-19 infection (sometimes referred to as “natural immunity”) remains uncertain and can vary based on individual characteristics. Those who have had prior COVID-19 infection also get additional benefit from vaccination. There is evidence that vaccines may provide better protection against current variants than natural immunity, and studies have shown that people who are unvaccinated have higher rates of reinfection compared to people who are vaccinated. For

example, a recent study showed that, among hospitalized adults with COVID-19-like illness, the adjusted odds of confirmed COVID-19 among unvaccinated patients with prior COVID-19 infection were more than 5 times higher than the odds among people fully vaccinated with the Pfizer or Moderna vaccine and no previous documented infection (<https://www.cdc.gov/mmwr/volumes/70/wr/mm7044e1.htm>). For this reason, the CDC recommends vaccination for people who have had a prior COVID-19 infection. This recommendation reflects current scientific evidence indicating that vaccination after infection significantly enhances protection and further reduces risk of reinfection.

20. Moreover, from a public safety perspective, vaccination provides a more certain and verifiable record of immunity than that afforded by prior COVID-19 infection. Testing for antibodies is not currently recommended to assess for immunity to SARS-CoV-2 (the virus that causes COVID-19), nor is it recommended to assess the need for vaccination in an unvaccinated person or to determine the need to quarantine after a close contact with someone who has COVID-19. At this time there is no specific antibody test or antibody threshold that can determine an individual's risk of subsequent infection.

21. It is therefore of critical importance that residents of New York City get vaccinated and encouraging vaccination is a major public health imperative. In particular, vaccination of individuals providing City services and working in City facilities will save lives, protect public health, and promote public safety.

22. To that end, the Health Department has engaged in and implemented a wide range of efforts, policies, and requirements to encourage widespread vaccination of New Yorkers, beginning with education and outreach; ensuring the vaccines are widely available; offering incentives to vaccination; and finally, moving forward with a series of escalating mandates

beginning with protecting the City's frontline healthcare workers¹ and some of the most at-risk populations (those in certain congregate settings, such as shelters, adult day care centers, and supportive housing).²

23. Once COVID-19 vaccines became available in late 2020, the Health Department worked to provide universal access to no-cost vaccination sites operating across the five boroughs at locations and during hours convenient to New Yorkers. Vaccination priority began with those working with the public – including health care workers and other professionals, like the New York Police Department, whose public-facing work puts them at increased risk for COVID-19. Over the course of many months, the Health Department disseminated widespread messaging, including through media campaigns, webinars, social media, community conversations, print materials, about the importance, effectiveness, and safety of COVID-19 vaccines tailored to specific neighborhoods, available in appropriate languages, and delivered by trusted and knowledgeable community partners.

24. In summer 2021, notwithstanding ensuring access to all populations at convenient places across New York City, the City saw that vaccination uptake was declining and instituted vaccination incentives, including \$100 pre-paid debit cards, free tickets to sporting events, and free memberships to various museums and theatres. Despite the efforts and policies described above, upon information and belief, the City employee vaccination rate, as of late summer 2021, had only reached about 65%.

¹ On July 21, 2021, the Commissioner of the Health Department issued an Order requiring COVID-19 vaccination or weekly testing for Health Department staff working in clinical settings and for all NYC Health + Hospitals staff. This Order is no longer in effect as it was superseded by regulations issued by the New York State Department of Health.

² On August 10, 2021, the Commissioner of the Health Department issued an Order requiring COVID-19 vaccination or weekly testing for City staff and contractors working in residential or congregate settings.

25. To address the vaccination rate, and as part of a broader effort to protect at-risk New Yorkers, including children not yet eligible to be vaccinated, the Commissioner of the Health Department issued an Order on August 24, 2021, requiring that Department of Education employees, contractors, and visitors provide proof of COVID-19 vaccination before entering a Department of Education building or school setting. That Order was re-issued on September 12 and 15, 2021, and subsequently amended on September 28, 2021. The Order and Amendment were ratified by the New York City Board of Health on September 17, 2021 and October 18, 2021.

26. Additionally, on August 31, 2021, Mayor de Blasio issued Executive Order No. 78, requiring that, beginning September 13, 2021, City employees and covered employees of City contractors be vaccinated against COVID-19 or submit on a weekly basis proof of a negative COVID-19 PCR diagnostic test.

27. City employees provide services to all New Yorkers that are critical to their health, safety, and well-being, and the City must take all reasonable measures to reduce transmission of COVID-19 when providing such services, both within the City workforce itself, as well as between City employees and the general public that they serve.

28. Vaccination is the most effective measure available to reduce COVID-19 transmission, and that is why it was determined that the City employee vaccination mandate, as set forth in the Commissioner's Order issued on October 20, 2021, was necessary to save lives, protect public health, and promote public safety.

I affirm under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
November 15, 2021



Michelle E. Morse, M.D., MPH